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The Development, Objectives and Planned Activities of the International Criminal Law Center of Fordham University School of Law

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The Development, Objectives and Planned Activities of the International Criminal Law Center of Fordham University School of Law

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Abstract

In the spring of 1990, Fordham University established the International Criminal Law Center to commence in the 1990-91 academic year.

KEYWORDS: planned, criminal, activities

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In the spring of 1990, Fordham University established the International Criminal Law Center to commence in the 1990-91 academic year. As the first and only center of its kind in this country, the International Criminal Law Center seeks to respond to the many and varying needs of the entities and individuals who effect and are affected by international criminal law. The International Criminal Law Center aspires to serve the United States, state and foreign governments, multinational corporations, the private bar and private citizens. Among the projects planned for the International Criminal Law Center are conferences, lectures, consultations with foreign missions and a scholars-in-residence program. In addition, the International Criminal Law Center, commencing in September 1991, will begin to publish its own law journal featuring timely articles by both members of the bar, leading academic authorities in the field, as well as domestic and foreign officials.

This article traces the adoption of the International Criminal Law Center and defines its objectives and proposed activities. The article begins with an explanation of Fordham University's decision to establish the International Criminal Law Center and then considers the International Criminal Law Center's goals and plans for achieving its objectives.

Development of the International Criminal Center

The authors originally proposed the establishment of the Interna-

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tional Criminal Law Center at Fordham University School of Law in the winter of 1990. International criminal law is a rapidly emerging area of the law. This is evidenced by this symposium as well as by the numerous articles being published in the field. The increasing number of cases, both criminal and civil, concerning the myriad of problems raised in this area likewise demonstrates the growing importance of this field. The growing importance of international criminal law is further evidenced by the decision of the American Bar Association to form an independent International Criminal Law Committee. Professor Abramovsky, who is the director of the center, is the Vice-Chair of that committee.

Three major problems have contributed to the heightened importance of international criminal law: globalization of business, terrorism, narcotics, and its attendant issues. The globalization of business necessitates that both the United States government and other nations have a readily available resource. Likewise, international businesses must be cognizant of the impact of the criminal laws of the various countries with which they do business. More specifically, in order to adequately represent these entities, members of the private bar, both foreign and domestic, must become aware and be kept up to date with the constant evolution of legislation, treaties, multi-lateral conventions and other agreements between nations which affect their clients.

Virtually every business transaction with any foreign ramification potentially contains a putative violation of a United States and/or foreign treaty obligation, statute, or regulation. As a result, international criminal law is not solely the concern of the scions of the bar who represent multinational corporations. Business has become so global that a working knowledge of the substantive as well as procedural aspects of international criminal law is a requirement of any lawyer who counsels, represents, or litigates on behalf of any client — no matter how small or large — who engages in or contemplates becoming involved in any business which contains transnational components.

Crime, unfortunately, like business, has become globalized. Terrorism is no longer just a national or regional problem. The atrocities wreaked by international terrorists over the last two decades have outraged the overwhelming majority of sovereign states and have resulted in numerous treaties and conventions to attempt to deal with this problem.

Narcotics trafficking, which inevitably has international ramifications, similarly has spawned nations to band together to combat this plague. That united effort has generated a number of international

agreements ranging from memoranda of understanding to bilateral treaties (i.e. extradition and mutual legal assistance treaties) to multi-lateral conventions. Thus, for example, the United States Senate has recently ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.¹

The international cooperation that has ensued from the "war on drugs" has also resulted in an increased international effort in the investigation and prosecution of other types of criminal acts. These acts range from intricate money laundering schemes to illicit offshore tax havens. This in turn has brought into question such issues as to what extent United States law may be applied extraterritorially and conversely, to what extent the laws of other countries may be used against American citizens who have not actually committed criminal acts within the territorial boundaries of those states, but whose activities have impacted in a criminal or detrimental form in those states.

Directly connected to the issue is the scope and extent of constitutional rights of American citizens who are targets of a criminal investigation overseas and whether these rights are applicable to resident aliens or even foreign nationals. This issue, in turn, raises the difficult questions of which law enforcement agents of the United States may operate abroad, what should their role be, and whether their actions are monitored strictly by the host state. Likewise, an ever increasing question which is asked domestically is to what extent and under what control may foreign law enforcement agents operate within the territorial boundaries of the United States.

These issues have arisen because, not only have the substantive laws expanded, but the methodology utilized to investigate, prosecute and defend international cases has become extraordinarily complicated. Attorneys have assumed a greater role in these international criminal cases. Until fairly recently, diplomatic agencies such as the Department of State and law enforcement agencies, for example, the Federal Bureau of Investigation and Drug Enforcement Administration, have shouldered most of the responsibility for setting policy and gathering evidence in international cases. American prosecutors (both federal, state and local) and criminal defense attorneys have become more involved in investigations and have increasingly relied upon relatively new law enforcement tools, such as mutual assistance treaties, to gather evidence. For example, Attorney General Richard Thornburgh's

1. U.N. Doc. E/CONF.82/15 (1988) (found in 28 I.L.M. 493 (1989)).

proposal to station federal prosecutors in foreign countries illustrates the heightened involvement of lawyers in international criminal law.

Although international criminal law had developed into an area of legal specialty, there was no academic center actively serving the international criminal law community. In the winter of 1990, the authors proposed the establishment of the International Criminal Law Center at Fordham University to serve that community. We chose Fordham University Law School, both because of our ties there and because of its geographic location and international graduate program. New York City is this country's hub for international business and (unfortunately) for crime. Moreover, the presence in the city of the United Nations and over 100 missions makes New York City an ideal location for an international criminal law center.

Additionally, the authors believed that the International Criminal Law Center would blend well with Fordham's international graduate program, which focuses on international business programs. Fordham's LL.M. Program, along with its European Community Center, both founded by Professor Barry Hawk and currently administered by Professor Michael Malloy, attracts students from all over the world. It was thus clear to Dean John Feerick and Associate Dean Georgene Vairo that the next component of Fordham's international program should be a center dedicated to the study of international criminal law.

The university was very receptive and enthusiastic about the proposal, and hence authorized the creation of the International Criminal Law Center. The law school's commitment to the study of international criminal law is evidenced by the recent addition to the curriculum of courses in international criminal law, inter-national criminal business law, and international human rights.

Objectives of the International Criminal Law Center

A primary goal of the International Criminal Law Center is to function as a think tank to help formulate United States policy in dealing with international criminal law issues. It is the authors' belief that, at present, there is no one office in the Department of Justice or Department of State which is solely dedicated to developing long term policy for international criminal law issues. Oftentimes, the United States seems to formulate its "policy" on international criminal law issues in an ad hoc manner. Perhaps even more alarming is the fact that the policy is one of reaction rather than a well thought out and

balanced proactive policy.²

The International Criminal Law Center will seek to offer guidance to government policy makers through conferences and symposia as new international criminal law issues arise. Further, the International Criminal Law Center will offer counsel by way of briefings and memoranda to the courts, Department of Justice and State officials.

The International Criminal Law Center will strive to serve a similar role to state and foreign governments as they create policies in response to the international criminal law issues that affect their communities. The Center intends to take advantage of its geographic location to consult with the many member states and observers of the United Nations to ascertain the concerns and needs of the world community that touch on international criminal law. Yet another function of the center will be to serve as an information clearinghouse and educational center to assist the private bar as new issues of international criminal law emerge.

Activities of the International Criminal Law Center

The International Criminal Law Center will host conferences dedicated to particular concerns of international criminal law. The papers presented at such conferences will be published independently as a publication of the International Criminal Law Center and, on occasion, will be published in the *Fordham Journal of International Law*.

In 1991, the International Criminal Law Center expects to sponsor conferences on money laundering and the role of the United Nations in resolving the problems posed by international narcotics trafficking. These are but two samples of the type of conferences which the Center will sponsor.

In addition to conferences, the Center will offer a series of lectures at the law school by American and foreign lawyers and law enforcement personnel. The Center plans to offer during the spring of 1991 lectures by American law enforcement agents about the dangers, regulations and methodology for conducting criminal undercover investiga-

2. See, e.g., Abramovsky, *Extraterritorial Abductions: America's "Catch and Snatch" Policy Run Amok*, U. VA. INT'L L.J. (1991) (discussing dangers inherent in using kidnapping to acquire *in personam* jurisdiction over fugitives abroad); Abramovsky, *Extraterritorial Jurisdiction: The United States' Unwarranted Attempt To Alter International Law in United States v. Unis*, 15 YALE J. INT'L LAW 121, 138 (1990) (discussing dangers inherent in extending subject matter jurisdiction beyond generally accepted principles of international law).

tions in foreign countries. At present, the International Criminal Law Center also anticipates offering a lecture by counsel to large American corporations about the representation of American corporations in criminal matters abroad.

In addition to sponsoring the conferences and lectures, the International Criminal Law Center takes advantage of its location in New York City through private meetings with foreign mission personnel. In addition, constant dialogue is had with leading members of the domestic bar to ascertain which areas they feel are in need of analysis and study.

Finally, the International Criminal Law Center is developing a "scholars in residence" program which will be composed of foreign students and their American counterparts. This program is intended to combine the training of students from diverse backgrounds and legal systems, which hopefully will result in creative proposals and solutions to complex and ever-growing multinational criminal law problems. It is the aspiration of the law school in general and the International Criminal Law Center in particular that these young men and women will one day be the leaders in their respective lands, whether they be scholars, public officials or private practitioners.

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